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May 28, 2019

BY EMAIL

Judge Robert D. Drain
U.S. Bankruptcy Court for
the Southern District of New York
300 Quarropas Street
White Plains, New York 10601

Re: In re Sears Holdings Corp., Case No. 18-23538

Dear Judge Drain,

We write on behalf of Wilmington Trust National Association, as Indenture Trustee and Collateral Agent, Cyrus Capital Partners, L.P., and ESL Investments, Inc. ("Second Lien Parties"),¹ in response to the Debtors' suggestion for a scheduling conference in connection with their Motion to Estimate Certain 507(b) Claims for Reserve Purposes ("Estimation Motion"), filed on Sunday, May 26, 2019 [Dkt. No. 4034]. We are available to attend such a conference at the Court's earliest convenience, including prior to the Disclosure Statement hearing that is scheduled for tomorrow.

Although we disagree with much, if not all, of what is contained in the Estimation Motion, this letter will confine itself to the timing and procedural issues presented. Attached hereto is the email response of the Second Lien Parties to the Debtors' email scheduling proposal that they attached to their motion. The email from me, dated May 23, 2019, invites the Debtors to have a telephone conference if there remain open issues. Our minor delay in getting back to

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Final Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing, (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Parties; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief* (the "Final DIP Order") [Dkt. No. 955].

Hon. Robert D. Drain

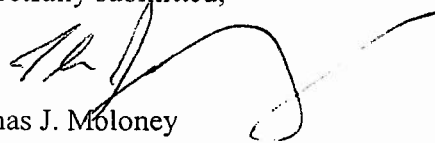
the Debtors on scheduling was due to the need for the Second Lien Parties to consult with their respective experts regarding a feasible date for three different parties to submit to the Court their expert reports. The Debtors never responded to my email or request for a telephone conference. As the Court can see, the Second Lien Parties proposed a schedule that is consistent with the Debtors' stated desire to resolve these issues in advance of the Debtors' proposed July 23, 2019 confirmation hearing date.

There is one material difference between our proposal and the Debtors' proposal for moving forward. The Debtors' seek to resolve issues concerning their not yet made 506(c) motion, the Second Lien Creditors' 507(b) administrative claim and the dispute over the use of cash collateral, all through a procedurally inadequate estimation motion. Under the Bankruptcy Code, estimation is only available to resolve claims under Section 502 – a Code section which is not implicated by any of these issues. The Second Lien Parties propose to resolve these issues in the context of a motion under Bankruptcy Rule 3012. This approach would remove the almost certain risk that this exercise would need to be repeated regardless of whether the Debtors confirm their Chapter 11 plan, and particularly if this case is converted to a Chapter 7 proceeding.

In this regard, it is worth noting that in neither of the cases on which the Debtors purport to rely in support of their Estimation Motion, *see* Mot. ¶ 26 & n.15, did the Court actually determine it was appropriate to use estimation to determine the amount of a post-petition administrative claim, *see In re Adelpia Bus. Sols., Inc.*, 341 B.R. 415, 423 (Bankr. S.D.N.Y. 2003) (declining to estimate administrative claim for purposes of allowance due to concern that the "great flexibility in estimation procedures[] raises risks of the denial of due process"); *see also In re MacDonald*, 128 B.R. 161 (Bankr. W.D. Tex. 1991) (estimating administrative claim to determine feasibility, but not ultimate allowance).

The schedule and approach we propose provides for the Second Lien Parties to file their motions for allowance under Bankruptcy Rule 3012 and expert reports by Tuesday, June 18; the Debtors to file any responses in opposition and opposing expert reports by Tuesday, June 25; the Second Lien Parties to file their replies by Monday, July 1; and a hearing date beginning Thursday, July 18. This will allow the Court time to hold any necessary evidentiary hearing, including in order to resolve the legal and factual issues under Section 507(b) and Section 506(c). In in our view, any such hearing will take no more than two days.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas J. Moloney', with a long, sweeping horizontal stroke extending to the right.

Thomas J. Moloney

From: Moloney, Thomas J.
To: Hwangoo, Natasha; Dublin, Philip; O'Neal, Sean A.; Weaver, Andrew
Cc: Genender, Paul; Schrock, Ray; tkreller@milbank.com; Dizengoff, Ira; Fox, Edward (External); Barefoot, Luke A.; Reimer, Eric; Friedmann, Jared; Singh, Sunny; Sorkin, Joseph L.; aqureshi@akingump.com
Subject: RE: Sears - Proposed 507(b) Briefing Schedule [confidential; subject to FRE 408]
Date: Thursday, May 23, 2019 11:23:41 AM

We have had the opportunity to review your proposed schedule with our experts to see what is reasonably feasible and have the following alternative suggestion, which if you find to be acceptable we propose, including in a court ordered stipulation. The schedule assumes we go first with a motion under Bankruptcy rule 3012 for the establishment and allowance of our secured claims and our super priority administrative claims under Section 507 (B). We have not built into the below schedule dates relating to the exchange of document requests and the submission of an agreed upon joint statement of facts but we are agreeable to incorporating those concepts once we have worked out the dates on the other items. Given the compressed nature of this schedule, we suggest limiting documents requests to targeted inquiries for any information not otherwise available from public sources that our experts might require. This schedule is based on the assumptions that the July 23 hearing date sticks and the July 18 date works for the Court and should obviously be revisited if either of those assumptions is incorrect.

- Tuesday, June 18:

- o Filing deadline for second lien holders' motion for allowance under Bankruptcy Rule 3012

- o Filing deadline for second lien holders' expert reports

- Tuesday, June 25:

- o Filing deadline for any response in opposition

- o Filing deadline for any opposing expert reports

- Monday, July 1:

- o Filing deadline for second lien holders' reply
 - Thursday , June 27 through Wednesday July 3:
 - o Depositions of second lien holders' experts (we have one expert who will need to be deposed in June because of travel plans)
 - Wednesday, July 10 and Thursday, July 11:
 - o Depositions of any experts of the opponents to the relief requested
 - Monday, July 15:
 - o Simultaneous exchange and submission of direct testimony from all parties
 - Thursday, July 18:
 - o Hearing date
- Happy to get on a call to discuss all or any of this . Cheers Tom

Thomas J. Moloney

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